

CHIEF JUDGE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,)	NO. CR13-00168MJP
)	
Plaintiff,)	
)	
vs.)	
)	DEFENDANT'S SENTENCING
DEBRA A. AARON,)	MEMORANDUM
)	
Defendant.)	
)	

Debra Aaron, by her attorney, Timothy Lohraff, submits this sentencing memorandum in mitigation of sentencing at a hearing before this Court on July 8, 2014. Ms. Aaron pled guilty to one count of Conspiracy to Defraud the Government in violation of 18 U.S.C. § 286 and one count of False, Fictitious or Fraudulent Claim in violation of 18 U.S.C. § 287 and 2. Mrs. Aaron is requesting that the Court impose a term of 60 months of probation with the first 24 months spent on home detention.

I. INTRODUCTION

Mr. and Mrs. Aaron share few characteristics of most defendants who appear before this Court to be sentenced on federal criminal charges. They have no criminal background whatsoever. They are over the age of 30. They are educated professionals who worked over the course of their lives maintaining successful careers in federal agencies. They have

1 grown children. And yet they find themselves facing time in federal prison. It is a
2 conundrum that would puzzle anyone. Why are these two people before the Court facing
3 time in prison?

4 Debra Aaron and her husband Samuel were drawn into an ill-advised venture to
5 utilize a tax avoidance scheme that they learned about at several seminars they attended in
6 early 2008. The seminars were given by ‘professional’ tax avoidance scam artists (although
7 the Aarons did not know this at the time). Neither of them created, thought up or invented
8 the 1099 OID write-off scheme that they participated in. Nor were they the only people in
9 the nation caught up in the machinations of tax scam purveyors like Winston Shrout.

10 Mrs. Aaron recognizes that her behavior was not only exceedingly foolish, but
11 actually criminal. She cannot believe that she allowed herself to get caught up in the
12 rhetoric, outlines, hand-outs and entire oeuvre of professional con men who earned a great
13 deal of money by conducting ‘seminars’ on tax savings schemes across the United States.

14 As Mrs. Aaron notes in her letter to the Court, “as I look back today I am very
15 disappointed and embarrassed that I allowed myself to be taken in by these individuals and
16 followed their instructions which seemed reasonable at the time.” (Mrs. Aaron’s letter
17 addressed to the Court attached as Exhibit 1)

18 The challenge facing the Court is to balance the factors set forth in 18 U.S.C. §
19 3553(a) to arrive at a sentence in this matter that is “[s]ufficient, but not greater than
20 necessary, to comply with the purposes set forth in paragraph (2) of this subsection.” The
21 defense asks the Court to strike the balance by tempering the foolish and wrong behavior
22 of Mrs. Aaron and her husband with mercy and provide a punishment that allows Mrs.
23 Aaron to pay for her misdeeds without punitively creating a situation in which she or her
24 husband’s health is significantly impacted.

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26

II. MS. AARON'S BACKGROUND

Mrs. Aaron is 60 years old. She grew up in Washington State in a comparatively healthy household, although her father was a practicing alcoholic which obviously negatively impacted the family, particularly Debra's mother who suffered from poor health much of her life. She left the family home at 18 when she found work in Seattle.

A. Education and Work History

Mrs. Aaron graduated from high school in Port Orchard in 1972. She subsequently obtained her B.S. in business administration at City University in 1981. Later in life she obtained a graduate degree, a M.A. in applied behavioral science from the Leadership Institute of Seattle, which is affiliated with Bastyr College, also in Seattle.

Since leaving home at 18 to work, Mrs. Aaron has basically worked her entire adult life to help support herself and her family. She worked at the Bonneville Power Administration (BPA), a federal nonprofit agency under the aegis of the United States Department of Energy from 1972 to 1978. From 1978 to 1981 she worked at HUD as an Equal Opportunity Specialist. From 1981 to 1986, she again worked for the BPA as a Personnel Management Specialist and later as an Equal Employment Specialist.

From 1986 to 1989 she was a Program Specialist with the U.S. Department of Transportation, Federal Aviation Administration (FAA), and from 1989 to 2006, continued to work for the FAA as a Management and Program Analyst. She returned to federal employment from 2011 until 2012, working at the U.S. Department of Transportation, Federal Highway Administration. (Debra Aaron's resume attached as Exhibit 2).

B. The Blessing Project

The Blessing Project (TBP) is an LLC that Debra created in 2006 to help indigenous women in third world countries. TBP works by purchasing raw materials such as beads, paper and yarn from women in foreign countries. The sales provide income to the women selling the raw materials and help them stay in business. TBP then utilizes volunteers and

1 craftspeople in the United States to make artistic items out of the purchased raw materials
2 and sell the items to further maintain the project and allow for more purchases of raw
3 materials from the indigenous women.

4 The idea for TBP first occurred to Debra in 2005 after reading an article by Rebecca
5 Lolosoli in the Seattle Times. Rebecca Lolosoli is a matriarch of the Umoja Women's
6 Village in Kenya and an international advocate for women's rights.¹ It should be noted that
7 one of the people involved in the early creation stages of the TBP was a woman that Debra
8 trusted deeply as a friend and spiritual confidant named Morganne Rayne. Rayne would
9 later encourage and instigate Debra's involvement in the whole 1099 OID tax avoidance
10 scheme.

11 The TBP was formally created as an LLC in September 2006. (See Exhibit 3,
12 Timeline for The Blessing Project). In October of 2006, Debra and her husband Samuel
13 traveled to Kenya and met with Rebecca Lolosoli and toured the Kazuri Bead factory.
14 Subsequently, Kazuri Beads and Umoja, both beading groups, became the first and second
15 "projects" for TBP.

16 In November 2006, Debra wanted to devote her energies full time to developing and
17 growing TBP. She resigned from the FAA and became the CEO of TBP. TBP website
18 (www.theblessingproject.com) was formed and activated in February 2007. By then, Debra
19 was already selling the three dimensional art cards to raise money to purchase materials.
20 She continued to develop new ideas for products such as shadowboxes to be used to raise
21 money. All of the products sold on the website are made by people in the U.S.
22 incorporating the purchased raw materials from the various women's cooperatives and
23 artisans that TBP denotes as "projects." (See Exhibit 4, "The Blessing Project: Our Projects
24 Around the Globe").

25
26 ¹ See e.g., <http://www.halftheskymovement.org/pages/rebecca-lolosoli>.

1 Debra and Samuel begin to travel to sell products and market TBP. In February 2007
2 they traveled to Miami to market at the United Centers for Spiritual Living and sold \$834
3 worth of items. Debra also attended events closer to home in Washington State selling
4 items and raising awareness about the existence of TBP. In March, 2007, Bead for Life, a
5 Uganda based cooperative was added as TBP project number three.

6 In April 2007 Debra attended a conference on Orcas Island that generated \$1,642 in
7 sales of TBP crafts. In October 2007, Debra and Samuel traveled to Nicaragua and met with
8 the women who run Olocika, a women's cooperative in Esteli, Nicaragua. Olocika make
9 paper from native plant fibers they collect and process. In February 2008, TBP added three
10 new projects all producing yarn: Mango Moon in Nepal; Be Sweet in South Africa and
11 Manos del Uruguay in South America.

12 Debra continued to go to events and sell projects and market TBP. In September
13 2008 she traveled to Sacramento, California to appear at a Healing Journeys event and
14 garnered sales of \$2,750 (\$550 of which was donated to Healing Journeys). In December
15 2008 she appeared at the Victorian Holiday Show in Puyallup and sold \$2,337 worth of
16 items. In March 2010, TBP adopted its first jewelry project, Freedom Stones, based on their
17 mission of eliminating and preventing human trafficking through livelihood projects that
18 transform and develop communities in Ghana, Thailand and Cambodia.

19 TBP continues as an on-going project. The website is still active. The government
20 portrays TBP as a trumped up front for receiving money from individuals that Mrs. Aaron
21 helped prepare and file tax forms using the 1099 OID scheme. Mrs. Aaron does not dispute
22 the fact that money from some of the people she filed tax returns for was put into TBP
23 coffers. She deeply regrets this. However, it does not denigrate the fact that TBP itself is
24 an organization created to do good and has achieved good results.

25 **C. Mr. and Mrs. Aaron's Health**

26 Mrs. Aaron has some significant health issues. Most seriously, she is diabetic. She

1 currently is able to manage her diabetes with medication. Perhaps of greater importance is
 2 the health of her husband Samuel. Mr. Aaron is seriously ill. He suffers from a rare disease
 3 called POEMS, an acronym for the most common signs and symptoms of the syndrome:
 4 *polyneuropathy* (nerve damage causing numbness, tingling and weakness in the hands and
 5 feet); *organomegaly* (organ enlargement of liver, lymph nodes or spleen); *endocrinopathy*
 6 (abnormal hormone levels); *monoclonal protein* (a collection of abnormal blood proteins
 7 (immunoglobulins) made from bone marrow cells called plasma cells; *skin changes*
 8 (increased skin pigment, increased body hair, thickening of the skin and whitening of the
 9 nails).

10 Mr Aaron has significant difficulties moving around. Getting to a grocery store or
 11 doctor, for example, without the help of some one would be impossible for him. If Debra
 12 is sentenced to time in prison, it will be a major impediment to Mr. Aaron's continued
 13 health and livelihood, as he is unable to perform many common duties and chores necessary
 14 for his maintenance.

15 **D. Letters From Family**

16 Mrs. Aaron's son and daughter have both written letters addressed to the Court on
 17 her behalf. Jennifer Johnson, her daughter, notes that not only does Mrs. Aaron have a
 18 distinguished career working for the government, her employment history includes many
 19 awards for helping develop programs to hire and train both women and minorities.

20 Her son Nicholas Johnson writes that his mother Debra and stepfather Samuel
 21 provided a "positive, stable, and loving environment for me as a child and one in which any
 22 child growing up would benefit from." He further notes that, "the positive impact that they
 23 had on my life is difficult, if not impossible, to put into words but one in which I am ever
 24 thankful for." (Letters from Jennifer Johnson and Nicholas Johnson attached as Exhibits
 25 5 and 6).

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III. STATUTORY FACTORS UNDER 18 U.S.C. § 3553(a)

18 U.S.C. § 3553(a) sets forth nine factors the Court must consider in crafting a just and fair sentence. The very first sentence of the statute sets forth the lens through which the remaining factors are to be viewed: “The court shall impose a sentence *sufficient, but not greater than necessary*, to comply with the purposes set forth in paragraph (2) of this subsection.” (Emphasis added). The first two factors require the Court to consider the nature and circumstances of the offense and the history and characteristics of the defendant.

A. Nature of the Offense

As noted previously, the Aarons are not the original creators of the 1099 OID tax avoidance scheme. They are not accountants, attorneys or tax experts. They foolishly placed their trust in national figures like Winston Shrout, whose seminars they attended, and also put their trust in local figures who advocated the use of the 1099 OID scheme, such as Debra’s close friend Morganne Rayne.

1. Professional Purveyors of the 1099 OID Movement

Mr. and Mrs. Aaron discovered the 1099 OID scheme by attending seminars held by Winston Shrout, a national presence who holds seminars and conferences across the country decrying the paying of taxes and advocating schemes such as the 1099 OID scheme.² They attended an “Advanced Seminar” with Winston Shrout, Seminars in Commerce in San Antonio Texas from February 15 to 17, 2008. Mr. Shrout, of course, charges people to attend his seminars.

At the conference in San Antonio, they learned about using the 1099 OID scheme to avoid taxes and get money back from the IRS. On March 10, 2008, impressed by what they ‘learned’ at the two day live seminar, they set up a conference call with Lisa Busser

² It is interesting to note that as the U.S. Department of Justice has instituted a national crackdown on the use of the 1099 OID scheme, Mr. Shrout no longer advertises or gives seminars about that particular tax avoidance device. See Mr. Shrout’s website at: <http://www.wssic.com/>.

1 who represented Shrout at his business “Solutions in Commerce.” Busser and Shrout were
2 so persuasive that Debra actually traveled to Hillsboro, Oregon on March 26, 2008, and met
3 privately with Winston Shrout to learn more about the 1099 OID scheme. This meeting was
4 facilitated by Morganne Rayne.

5 At some point, Shrout sold them a DVD that he distributed at his national seminars
6 titled “1099 OID—and Its Place History” [sic]. (Scan of the DVD attached as Exhibit 7).
7 Shrout and other 1099 OID professional speakers cite quasi legal formulations; tax code
8 provisions; constitutional analysis and alleged historical bases of the IRS in support of their
9 claims that using a 1099 OID scheme is both moral and legal.

10 In 2008 and 2009 the Aarons continued to attend conferences and seminars at which
11 speakers propounded the use of the 1099 OID scheme and claimed it was not only legal but
12 actually authorized by the IRS. At these conferences they were given additional hand-outs
13 and other materials justifying the alleged legality of this scheme.

14 2. Timeline of Activities

15 The Aarons electronically filed their 1040 tax return for tax year 2007 on June 1,
16 2008, utilizing the OID income and withholding scheme. The original amount of OID
17 claimed was \$1,107,358.00 with \$402,911.00 withheld for federal income taxes. \$76,189.58
18 in interest was tacked on. On June 13, 2008, they received a tax ‘refund’ of \$723,275.00
19 electronically. On October 13, 2009, they received the first of many future communications
20 from the IRS, a IRS Form 3552 Notice of Tax Due in the amount of \$1,183,547.58.

21 TBP was set up in 2006, two years before the Aarons filed the illegal tax return at
22 issue in this case. They started purchasing materials from their projects in 2006, again two
23 years prior to making any money from the 1099 OID scheme. (See Exhibit 8, breakdown
24 of purchased materials by The Blessing Project from January 1, 2006 to December 31,
25 2013).

26 Debra Aaron helped approximately 30 other 1099 OID scheme believers that she met

1 either through seminars or through Morganne Rayne file tax returns utilizing the 1099 OID
2 scheme. She filed these returns through a Filing Information Returns Electronically (FIRE)
3 account with the IRS that she and Samuel set up through Jennick Inc., a corporation the
4 Aarons had set up in Nevada. Some of the 30 people provided money to the Aarons for this
5 service.

6 At the point in 2009 when the IRS first contacted the Aarons about their 2007 tax
7 return, things could have been set right. Unfortunately, they were not. Continuing to
8 believe in the legitimacy of what they had been taught at the seminars and in person by
9 Winston ShROUT and others, they continued to rely on ShROUT and the other "experts" for
10 advice in dealing with the IRS. Hence, the nonsensical "Accepted For Value" letters sent
11 by Mr. Aaron to the IRS in 2009 in response to the IRS Notice for Tax Due. They were still
12 drinking the Kool Aid at that point.

13 Eventually the enormity of what they had done became clear. Debra discerned that
14 they had relied on faulty information. She came to realize that the entire 1099 OID scheme
15 was illegal and had not been approved by the IRS and that they had been sold a bill of
16 goods. On February 11, 2011, the Aarons retained the services of J. G. Tax Group to
17 represent them with the IRS.³ At this point, Debra Aaron was trying to rectify the mistakes
18 she had made. When she found out that the 1099 OID scheme was fraudulent and illegal,
19 she made every effort to re-file legitimate tax returns on behalf of the 30 people she had
20 filed original tax returns utilizing the 1099 OID scheme.

21 On May 7, 2013, only a few weeks before the indictment was unsealed, the Aarons
22 spoke (not for the first time) with IRS Revenue Officer William Waight. He advised them
23 to file an amended tax return for 2007 without the 1099 OID deductions and told them that
24 their tax liability would be reduced to the \$723,275 which had been unlawfully provided to

25 ³ The J.G. Tax Group apparently contains numerous ex-IRS employees and appears to
26 be a legitimate business concern. See: <http://www.jgtaxgroup.com/>.

1 them. They followed his recommendation and filed the correct amended tax return on May
2 22, 2013. The indictment was unsealed on May 29, 2013, so the corrected return was filed
3 before they were ever aware of criminal charges.

4 All of the returns that Mrs. Aaron filed through the FIRE account were on behalf of
5 people who similarly believed in the 1099 OID scheme as preached by Winston ShROUT and
6 other professional speakers. Mr. and Mrs. Aaron never conducted a tax avoidance seminar;
7 and never provided handouts, DVD's or materials advocating 1099 OID schemes.

8 In short, the people whose returns they filed were people who were making their own
9 measured and independent decision to file tax returns utilizing the 1099 OID deduction
10 scheme. Mrs. Aaron facilitated the filing of said returns by using the Jennick Inc. FIRE
11 account.

12 **B. Need to Avoid Unwarranted Sentence Disparities Among Defendants
With Similar Records Who Have Been Found Guilty of Similar Conduct.**

13 There have been a number of prosecutions in the Western District of Washington
14 regarding the exact same charges that Debra Aaron has been convicted of or similar charges
15 involving defendants using false deductions under the 1099 OID scheme and receiving
16 illegal refunds.

17 For example in *United States v. Donald Mason*, CR09-00407JCC, Mr. Mason was
18 charged with Theft of Public Money in violation of 18 U.S.C. § 641 and 2. Mason
19 submitted false tax documents to the government. Mr. Mason did not readily plead guilty
20 and admit his guilt. He not only forced the government to trial, but as the government stated
21 in its sentencing memorandum in the case, Mr. Mason "[i]s not simply guilty of the offense.
22 He comes before this Court defiant, a streak that he had displayed throughout his case."
23 (Government's Sentencing Memorandum p. 2 in *U.S. v. Mason* attached as Exhibit 9).
24 Indeed, according to the government's sentencing memo, Mason continued to argue that the
25 government owed him money even after trial and before sentencing.
26

1 According to the government's sentencing memo, Mason attempted to steal nearly
2 \$700,000 from the United States Treasury. (Exhibit 9, p. 1). Mr. Mason's guidelines
3 offense level was 20 for an advisory range of 33 to 41 months. Despite his conduct and the
4 government's alleged concern about the fact that the "[I]RS continues to be flooded with
5 fraudulent returns from this scheme and the scheme continues to be promoted," the
6 government recommended the low-end of the advisory range of 33 months, which was what
7 he was sentenced to. (Exhibit 9, p. 10).

8 Perhaps the case that appears to be most similar to the facts and circumstances of
9 Mrs. Aaron's case is *United States v. Wonita Chung*, CR10-00328JCC. Ms. Chung pled
10 guilty to a count of conspiracy with the object of the conspiracy being Theft of Government
11 Funds, in violation of 18 U.S.C. § 641 and False, Fictitious or Fraudulent Claims in
12 violation of 18 U.S.C. § 287.

13 According to the government's sentencing memorandum, participants in the tax scam
14 in that case sought over \$760,000,000 in fraudulent returns from the IRS. (Government
15 Sentencing Memorandum in *U.S. v. Chung*, p. 2, attached as Exhibit 10). The government
16 notes in the sentencing memo that Chung hosted and helped organize meetings in Canada
17 where co-defendant Ronald Brekke (a professional purveyor of tax fraud schemes similar
18 to Winston ShROUT) and others promoted the scheme. Participants at the meetings Chung
19 hosted filed over \$3.3 million in fraudulent returns. The IRS issued checks totaling over
20 \$1.4 million in the Chung group. (Exhibit 10, p. 2).

21 Chung's guidelines offense level was 31 with a sentencing range of 108 to 135
22 months. Because she pled guilty to a conspiracy count, her exposure was limited to 60
23 months. The government noted that "Wonita Chung bears great responsibility for her
24 actions. She was a willful participant in a serious and far-ranging conspiracy. Participants
25 from the meetings she organized alone sought over \$3.3 million in fraudulent
26 returns....moreover, general deterrence is very important in cases such as these. The same

1 tax scam underlying this conspiracy has appeared nationwide, and in other parts of Canada
2 as well.” (Exhibit 10, p. 5).

3 Despite the fact that Chung’s offense level was 31; that she directly hosted and
4 participated in meetings with one of the tax scam purveyors; and that her case involved \$3.3
5 million of intended loss; the government recommended a prison sentence of only 18
6 months for Ms. Chung.⁴ (Exhibit 10, p. 5). The sentencing court sentenced her to 18
7 months in prison.

8 **C. Other Factors Support a Sentence of Probation With House Arrest.**

9 18 U.S.C. § 3553(a) also requires the Court to consider a sentence that will afford
10 adequate deterrence to criminal conduct; to protect the public from further crimes of the
11 defendant; and to provide the defendant with needed educational or vocational training,
12 medical care, or other correctional treatment in the most effective manner.

13 Mrs. Aaron has to be one of the most unlikely defendants to re-offend that has ever
14 appeared before this Court. Her age, her education, her medical condition and her remorse
15 make it extremely unlikely that she will ever violate the law again.

16 **1. Extraordinary Family Circumstances**

17 The Ninth Circuit has consistently recognized a sentencing court’s ability to depart
18 down substantially to impose probation in cases where there are extraordinary family
19 circumstances or where incarceration would have a harsh effect on other family members.
20 Of course, post *Booker*, the Court no longer has to engage in nimble gymnastics to impose
21 a sentence it finds fair and just under the case law now in effect.

22 Mrs. Aaron’s health issues, and Mr. Aaron’s health issues mitigate for a sentence of
23 probation with house arrest. If Mrs. Aaron is incarcerated, Mr. Aaron will face a serious,
24 life-threatening and debilitating disease without his wife to help him on a daily basis with

25 ⁴ The AUSA who wrote the sentencing memorandum in Ms. Chung’s case was
26 Mr. Thomas Woods, who is also prosecuting Mrs. Aaron’s case.

1 chores that are essential to his well-being.

2 In *United States v. Menyweather*, 431 F.3d 692 (9th Cir. 2005), the Ninth Circuit
3 found no abuse of discretion when the sentencing court departed eight levels down to
4 impose probation on a defendant in a case involving \$500,000 in embezzlement.

5 Similary, in other pre-*Booker* cases, in *United States v. Leon*, 341 F.3d 1122 (9th Cir.
6 2003) and *United States v. Aguire*, 214 F.3d 1122 (9th Cir. 2000), the Court upheld
7 departures based upon extraordinary family circumstances such as a suicidal wife suffering
8 from renal failure and an eight year old son who had lost his father and would lose his
9 mother were she sent to prison for a substantial sentence.

10 This was a non-violent crime that did not involve guns, drugs or potential harm to
11 any citizen or agent. There is absolutely no danger to the public in sentencing Mrs. Aaron
12 to federal probation with house arrest.

13 The Aarons have been paying restitution through the government taking money from
14 their pensions and have now paid back \$170,896 of the \$723,275 they owe. They will
15 continue to pay back the restitution and it is expected that the complete restitution will be
16 paid back in this case (unlike many other cases where the Court and the government realize
17 there will never be any restitution recovered).

18 **IV. GUIDELINE PROVISIONS**

19 The PSR incorrectly calculates the final offense level as 26 with a CHC of I. (Final
20 PSR, ¶27). While Mrs. Aaron does not contest that the base offense level is 6, with a proper
21 increase of 20 levels for the amount of loss, she does dispute that she was a manager or
22 supervisor and that the criminal activity involved more than five or more participants under
23 USSG § 3B1.1(b) for an upward adjustment of three additional levels.

24 U.S. Probation and the government find, therefore, that the adjusted offense level is
25 29 and the final offense level is 26 with three levels off for acceptance of responsibility with
26 an advisory range of 63 to 78 months. The defense argues that the adjusted offense level

1 should be 26 with three levels off for acceptance of responsibility for a final offense level
2 of 23 with an advisory range of 46 to 57 months.

3 **A. Manager or Supervisor Under USSG §3B1.1(b)**

4 U.S. Probation adds three levels to Mrs. Aaron's offense level for being a manager
5 or supervisor under USSG §3B1.1(b). The defense objects to this upward adjustment. Mrs.
6 Aaron was not supervising or controlling the 30 people she agreed to file tax returns for.
7 They were all people who were believers in the world of 1099 OID schemes as developed
8 by paid speakers who presented at seminars and lectures being given around the United
9 States and who distributed DVD's and written materials at the lectures and seminars that
10 people paid to attend. An example of these professional speakers is Winston Shrout.

11 In *United States v. Whitney*, 673 F.3d 965 (9th Cir. 2012), a similar case, the Ninth
12 Circuit held that a two level upward adjustment under this guideline section was
13 inappropriate for a defendant convicted of the exact same charge as Mrs. Aaron: a count
14 of conspiracy to defraud the government under 18 U.S.C. § 286.

15 The Court noted that "[u]nder this circuit's clear articulation of 3B1.1(c), 'even a
16 defendant with an important role in an offense' cannot receive an enhancement unless there
17 is also a 'showing that the defendant had control over others.' *United States v. Lopez-*
18 *Sandoval*, 146 F.3d 712, 717 (9th Cir. 1998). This renders conduct which may have been
19 integral to the success of the criminal enterprise *see United States v. Harper*, 33 F.3d 1143,
20 1151 (9th Cir. 1994) or conduct that reflects a high degree of culpability *United States v.*
21 *Hoac*, 990 F.2d 1099, 1111 (9th Cir. 1993) insufficient to support a leadership enhancement
22 unless the defendant also exercised the requisite control over others." *Whitney*, 673 at 975.
23 (Emphasis added).

24 Like the defendant in *Whitney*, there is no evidence in the record that Mrs. Aaron
25 exercised any control over the 30 people she filed false tax returns for. They were all
26 independent adults who made their own decision to file tax returns under the aegis of the

1 1099 OID scheme. Mrs. Aaron did not make the decision for them whether to file the false
 2 returns or not, she simply facilitated the filing by making use of her FIRE account. Under
 3 *Whitney*, this is not enough to come under USSG 3B1.1(b).

4 **B. Changed Nature of The Sentencing Guidelines**

5 The U.S. Supreme Court in a ground breaking series of decisions from *United States*
 6 *v. Booker*, 543 U.S. 220 (2005), to *Gall v. United States*, 552 U.S. 38 (2007) to *Rita v.*
 7 *United States*, 551 U.S. 338 (2007), has made it clear that not only are the Sentencing
 8 Guidelines no longer mandatory, they are no longer even presumptively reasonable. Federal
 9 sentencing courts are required to perform an independent analysis under the 18 U.S.C. §
 10 3553(a) factors prior to fashioning a tailor-made sentence for each individual defendant.
 11 Federal sentencing courts are no longer bound by a ‘one-size-fits-all’ sentencing schemata,
 12 in which a defendant’s numerical criminal ‘box score’ serves as the mandatory sentencing
 13 range.

14 The Ninth Circuit has clearly recognized the independence of sentencing courts
 15 based on those decisions: “‘the point of *Kimbrough*’ was ‘a recognition of district court’s
 16 authority to vary from the crack cocaine Guidelines based on *policy* disagreement with
 17 them, and not simply based on an individualized determination that they yield an excessive
 18 sentence in a particular case.’” *United States v. Mitchell*, 624 F.3d 1023, 1028 (9th Cir.
 19 2010) (citing *Spears v. United States*, 129 S.Ct.840, 843) (emphasis in original).

20 Mrs. Aaron’s request for probation with the first 24 months served as home detention
 21 is specifically allowed by the advisory guidelines. U.S.S.G. § 5B1.3(e)(2) sets forth
 22 conditions of probation, states that home detention may be imposed as a condition of
 23 probation but only as a substitute for imprisonment.

24 Home detention is further defined in U.S.S.G. § 5F1.3 for defendants sentenced to
 25 a term of probation, but only as a substitute for imprisonment. The guidelines define “home
 26 detention” as “a program of confinement and supervision that restricts the defendant to his

1 place of residence continuously, except for authorized absences, enforced by appropriate
2 means of surveillance by the probation office. When an order of home detention is
3 imposed, the defendant is required to be in his place of residence at all times except for
4 approved absences for gainful employment [etc.]” Application Note 1.

5 **V. CONCLUSION**

6 Mrs. Aaron fully and completely accepts responsibility for her criminal actions in
7 filing a false tax return and helping others to do so. It was a very aberrant mistake in a long
8 lifetime of being a professional, a student and a mother. The request for five years
9 probation with the first 24 months spent on house arrest is not made lightly or
10 disrespectfully. Society’s goals are not advanced by putting Mrs. Aaron in a federal prison
11 at this stage of her life.

12 For all of the above reasons, Ms. Araon respectfully requests that this Court sentence
13 her to a term of probation for 60 months, the first 24 months to be spent on home detention.

14 DATED this 26th day of June, 2014.

15 Respectfully submitted,

16 *s/Timothy R. Lohraff*
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26

CERTIFICATE OF SERVICE

I hereby certify that on June 26, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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